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Filing date: **05/12/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                           |   |
|---------------------------|---|
| Proceeding                | 91183291  |
| Party                     | Defendant<br>Caskey Consulting Inc.   |
| Correspondence<br>Address | DAVID CASKEY<br>CASKEY CONSULTING INC.<br>1413 4TH STREET SW<br>WASHINGTON, DC 20024<br><br>dave@caskeyconsulting.com |
| Submission                | Answer  |
| Filer's Name              | Stephanie Goeller   |
| Filer's e-mail            | stephanie.goeller@pillsburylaw.com, kevin.kramer@pillsburylaw.com   |
| Signature                 | /Stephanie Goeller/   |
| Date                      | 05/12/2008  |
| Attachments               | Applicant's Answer to Notice of Opposition - SMT+AR.pdf ( 13 pages )(685136 bytes )                                   |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|                         |   |                         |
|-------------------------|---|-------------------------|
| SERCO INC.,             | ) |                         |
|                         | ) |                         |
| Opposer,                | ) |                         |
|                         | ) | Opposition No. 91183291 |
|                         | ) |                         |
| v.                      | ) | Serial No. 77277569     |
|                         | ) |                         |
| CASKEY CONSULTING INC., | ) |                         |
|                         | ) |                         |
| Applicant.              | ) |                         |

**APPLICANT'S ANSWER TO NOTICE OF OPPOSITION**

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Sir or Madam:

Applicant Caskey Consulting Inc. ("Caskey" or "Applicant"), through its attorneys, hereby answers Serco Inc.'s ("Serco" or "Opposer") Notice of Opposition. With respect to the preamble of the Notice of Opposition, Applicant denies that Opposer is being or will be damaged by the registration of Serial No. 77/277569 for the mark SMT+AR.

1. Applicant admits that Opposer and Applicant entered into a Consultant Agreement dated June 7, 2005 ("June 7<sup>th</sup> Agreement"), which Agreement expired pursuant to its terms on June 12, 2006. However, Applicant denies that the agreement attached as Exhibit 1 to Opposer's Notice of Opposition is the agreement entered into by Opposer and Applicant. Rather, attached hereto as Exhibit 1 is a true and correct copy of

the June 7<sup>th</sup> Agreement entered into by Opposer and Applicant. Applicant is without sufficient information to admit or deny the allegations in Footnote 1 of Paragraph 1 of the Notice of Opposition and, therefore, denies the same.

2. Applicant admits that the June 7<sup>th</sup> Agreement contemplates that Applicant's "consulting assignments shall encompass expertise in Supervisory Skills," that John Brundage was Applicant's contact at Serco under the June 7<sup>th</sup> Agreement, and that Applicant's performance under the June 7<sup>th</sup> Agreement was limited by Attachment A of the June 7<sup>th</sup> Agreement.

3. Applicant admits that the June 7<sup>th</sup> Agreement states that "[i]t is agreed that any and all drawings, data, and documentation prepared by [Caskey] in performance of the work under this Agreement is the exclusive property of [Serco]. In addition, [Serco] shall have unlimited rights to such drawings, data, and documentation." Applicant denies that this language in the June 7<sup>th</sup> Agreement encompasses indicators of source, including trademarks, and states that this language is limited by Attachment A of the June 7<sup>th</sup> Agreement. Applicant notes that Attachment A is limited to reviewing "SERCO developed Supervisory Skills course and provid[ing] written comments, and recommendations for improvement."

4. Applicant denies the allegations in Paragraph 4 of the Notice of Opposition.

5. Applicant denies ever preparing any "course materials" under the June 7<sup>th</sup> Agreement.

6. Applicant denies the allegations in Paragraph 6 of the Notice of Opposition and states instead that the term “SMT+AR” is an acronym for: (1) Specific; (2) Measurable; (3) Timed; and (4) Aligned; (5) Realistic.

7. Applicant admits that Serco included a footer on the first page of certain “course materials” that read “Serco Proprietary Information.” However, Applicant denies that such footer or any “course materials” were delivered pursuant to the June 7<sup>th</sup> Agreement, denies that such footer was consistent with the language of the June 7<sup>th</sup> Agreement, denies that Applicant included such footer on any “course materials,” and denies the remainder of the allegations in Paragraph 7 of the Notice of Opposition.

8. Applicant is without sufficient information to admit or deny the allegations in Paragraph 8 of the Notice of Opposition and, therefore, denies the same.

9. Applicant admits that Serco was a prime contractor in proposals to the U.S. government. Applicant denies that Serco was the party affiliated with the SMT+AR mark in any proposals. Applicant denies that David Caskey was always merely identified in Serco’s proposals as a potential consultant to Serco if Serco was awarded the related government contracts. Applicant is without sufficient information to admit or deny the remainder of the allegations in Paragraph 9 of the Notice of Opposition and, therefore, denies the same.

10. Applicant admits the allegations in Paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations in Paragraph 11 of the Notice of Opposition.

12. Applicant denies that Serco used SMT+AR mark as a source identifier for its own goods in marketing its services to the U.S. government. Applicant is without sufficient information to admit or deny the remainder of the allegations in Paragraph 12 of the Notice of Opposition and, therefore, denies the same.

13. Applicant denies that Serco is the exclusive owner of the SMT+AR mark in the United States. Applicant is without sufficient information to admit or deny the remainder of the allegations in Paragraph 13 of the Notice of Opposition and, therefore, denies the same.

14. Applicant is without sufficient information to admit or deny the allegations in Paragraph 14 of the Notice of Opposition and, therefore, denies the same.

15. Applicant admits the allegations in Paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations in Paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations in Paragraph 17 of the Notice of Opposition.

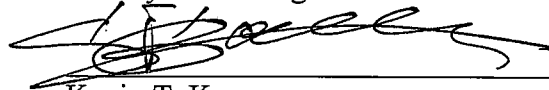
18. Applicant denies the allegations in Paragraph 18 of the Notice of Opposition.

Applicant reserves the right to raise additional defenses as may become known during discovery.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed with prejudice and that its registration issue forthwith.

Respectfully submitted,

Caskey Consulting Inc.

A handwritten signature in black ink, appearing to read 'K. Kramer', is written over a horizontal line.

Kevin T. Kramer

Stephanie F. Goeller

PILLSBURY WINTHROP SHAW PITTMAN LLP

2300 N Street, N.W.

Washington, D.C. 20037

Phone: (202) 663-8000

Fax: (202) 663-8007

# **EXHIBIT 1**

June 7, 2005



## CONSULTANT AGREEMENT

Dave Caskey  
Caskey Consulting  
1413 4<sup>th</sup> Street SW  
Washington, DC 20024

Resource Consultants, Inc. (RCI) is pleased to offer you a Consultant Agreement to furnish professional consulting services and products to RCI. Your consulting assignments shall encompass expertise in Supervisory Skills. Performance shall be in compliance with Attachments "A". Your tasks will be assigned to you by the following RCI official(s):

John Brundage  
Phone: 703.418.1050 x254  
Email: John.Brundage@serco.com

As consideration for these consulting services, we agree to the following terms and conditions:

\* TERM: This agreement is effective for the period from 13 June 2005 through 12 June 2006. Any extensions to this period of performance may be made as a result of the mutual agreement of the parties as expressed in a written bilateral modification hereto.

\* CONSIDERATION: RCI will pay for your services at the rate of \$ 135.00 per hour for time actually performed in accordance with written Task Assignment Records, as may be issued by the aforesaid official representative of RCI. In addition, should travel other than that between your residence and normal place of business be required on your part in connection with your consulting assignments, RCI shall reimburse you be in accordance with the JTR (FAR clause 31.205-46) associated with your transportation and subsistence, provided however that you received prior express written authorization from the aforesaid RCI official.

\* TERMINATION: This agreement is terminable at will by either party giving the other party ten (10) calendar days written notice. However, RCI has the right at its own discretion to order the immediate discontinuance of work on any tasks or projects on which you may be working. In such an event, RCI shall notify you as to whether any additional work may be assigned to you in the future, or that effective ten (10) days from such notice the Agreement shall terminate. In such latter event you will be paid the actual cost incurred during your work performance up to the point of appropriate

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notice to discontinue effort, provided, however that such costs must be verifiable and, in the case of travel, transportation, and subsistence costs, in accordance with the express authorization of the aforesaid RCI official.

\* TASK ASSIGNMENT RECORDS: RCI Subcontracts shall be solely responsible for the issuance of any Task Assignment Records and Authorizations which may be issued to you. You are not authorized under any circumstances to perform work under this agreement without a fully executed Task Assignment Record.

Your Task Assignment Record (TAR) shall provide the number of man-hours required to perform the specified work. The price shall be based upon the availability of funds and include the number of estimated hours and the hourly rates set forth under the "Consideration" provision contained herein. The costs of any travel required shall be estimated by you in accordance with Federal Travel Regulations or Joint Travel Regulations as applicable, which shall be included as an element of the Material (ODC) ceiling.

Task Assignment Records shall state the technical and deliverable requirements of the work to be performed, and at the minimum include the following information: (1) Statement of Work; (2) Delivery Schedule; (3) Any required travel; and (4) Man-Hour, Labor, and ODC Ceilings.

You are not authorized to exceed the approved Task Assignment Record Labor or ODC ceiling values.

RCI reserves the right to inspect the quality of the deliverables submitted by you in accordance with the TAR, and to return any products of unsuitable quality to you for rework at no additional cost to RCI. In the event that you refuse to rework the products to the required quality, RCI reserves the right to perform the required effort itself, or to contract with another entity for the services, and to withhold from payment to you, for work rejected by RCI as unsuitable.

\* INVOICING The Consultant will submit an invoice to the Contractor at 2650 Park Tower Drive, Suite 800, Vienna, VA 22180 Attn: Subcontracts Invoices should be submitted not later than the fifth (5<sup>th</sup>) of the current month for the preceding month's efforts. The invoice must include the following data/information:

- Consultant Name
- Invoice Number
- Invoice Date
- Period of Performance of work performed
- Charge Number (See TAR)
- Hours & Rate per Hour
- Cumulative Hours to Date

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- Total Travel and accompanying back up documentation attached (Hotel, Air, Car, etc...receipts)
  - Cumulative Travel to Date
  - Grand Total of Labor and Travel (both current and cumulative)
1. Travel must be in accordance with the JTR (FAR clause 31.205-46) and authorized in advance by the RCI technical POC.
  2. Electronic transmittal is encouraged (email – [subcontracts@resourceconsultants.com](mailto:subcontracts@resourceconsultants.com))
  3. Invoices submitted to RCI are subject to the provision of the False Statements Act (62 Stat. 749) and the False Claims Acts (96 Stat. 978 and 62 Stat 698) which statutes carry penalties, fines and/or prison terms.
  4. Payment Terms - Net 45

\* SUBSISTENCE PER DIEM CEILINGS: No actual costs in excess of the applicable per diem rates specified in the Federal Travel Regulations and Joint Travel Regulations shall be reimbursed by RCI to the consultant. By law such costs are unallowable under Federal Government contracts. RCI does not, either directly or indirectly, authorize the consultant to incur costs in excess of the above noted per diem ceilings while engaged in official travel under the terms of this Agreement.

RCI reserves the right upon reasonable notice to examine your books and records relating to your incurred costs for this agreement and for a period of up to three years following the payment date of your final invoice.

\* USE OF YOUR RESUME: With respect to proposals prepared by RCI, you agree to grant to us permission to use your qualifications resume subject to your prior agreement. If RCI does not have a copy of your current resume on file, a resume must be submitted with the signed Agreement for final approval.

\* INDEMNIFICATION AND INSURANCE: You hereby agree to indemnify, defend, and hold RCI harmless from and against all claims and actions, as well as all expenses including legal fees, incidental to such claims and actions based upon or arising out of damaged property or injuries or deaths to persons which are either caused by or contributed to by you or your agents during the performance of work under this agreement. You are at all times an independent contractor. Accordingly, as a Sole Proprietor, you will maintain insurance for your professional actions in accordance with state and Federal Requirements, which ever is the more stringent of the two. (i.e. professional liability insurance, comprehensive automobile liability insurance etc.) Please note that Worker's Compensation is the Sole Proprietor's responsibility. A copy of all applicable insurance policies will be provided upon request. The preceding list of responsibilities is for example only, and is neither limiting nor all inclusive.

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\* DATA: It is agreed that any and all drawings, data, and documentation prepared by you in performance of work under this Agreement is the exclusive property of RCI. In addition, RCI shall have unlimited rights to such drawings, data, and documentation. Under no circumstances shall any such data be transferred or communicated to any party other than a current RCI employee.

You also understand and agree that all data provided to you or of which you become aware during the course of your performance under this Agreement shall be considered to be commercially valuable proprietary data which is the exclusive property of RCI. Such data shall be used for no purpose other than for performance under the contract. Under no circumstances shall any such data be transferred or communicated to ANY unauthorized party. Any person not an employee of RCI is included in the definition of an unauthorized party. The obligations of the consultant under this paragraph which prohibit the transfer of proprietary data shall survive the termination of this Agreement for a period of one (1) year from the date of termination. Upon notification of termination of this Agreement, all documents in the possession of the consultant shall be returned to RCI prior to any final payment due under this Agreement.

\* SUBSTITUTION: You agree that you will personally perform the services required under this Agreement. No assignment of this Agreement or substitution of another individual or company for yourself will be made without the express written approval of the aforesaid RCI official.

\* FACILITIES: It is contemplated that the nature of your services will be accomplished independent of any use of RCI facilities. Therefore, except at the sole option of RCI, RCI facilities and equipment shall not be made available to you for the performance of your services. Notwithstanding the foregoing, you are not prohibited from entering RCI facilities for the conduct of business meetings incidental to the performance of assigned tasks (e.g., progress reviews and problem resolution meetings) or administrative matters (e.g., submission of invoices and submission of data deliverables).

\* STANDARDS OF CONDUCT CLAUSE: Consultants shall at all times comply with existing laws and Government regulations of the United States and any other country in which Consultant is acting on behalf of RCI, and shall at all times behave professionally and ethically. Consultant specifically warrants and represents that Consultant has not paid or agreed to pay, nor will Consultant pay or agree to pay, any gratuities or kickbacks in connection with this Agreement. Consultant specifically warrants and represents that no political contributions have been made or are to be made in connection with any orders solicited for the account of RCI. The Consultant shall comply with all Federal regulations which are intended to be applicable to Consultants, whether or not such regulations are in effect at the time of execution of this Agreement.

\* INDEPENDENT CONTRACTOR STATUS: It is agreed by all parties hereto that the relationship of Consultant, when providing associated services to RCI hereunder, is at all times that of an independent contractor, and that Consultant is not in any way to be considered as an employee or agent of RCI.

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\* LIMITATION OF AUTHORITY: At no time during the term of this Agreement shall Consultant make any commitment or representation which would in any way obligate or bind RCI without specific authorization from RCI.

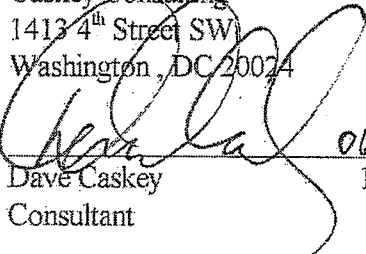
\* CONFLICTS OF INTEREST:

(a) Consultant during the term of this Agreement and for twelve (12) months following the expiration of this Agreement, shall not, without prior written approval from RCI:

1. establish corporate entities whose products or services are in direct competition with RCI;
2. recruit current employees or consultants of RCI for duties or employment with other firms or with consultant without the express written consent of RCI;
3. represent a conflict of interest without prior disclosure to RCI.

This agreement is the complete understanding of the two parties. In addition Consultant in executing this document verifies full compliance with Attachments "A" and "B". All prior written and oral understandings and agreements are incorporated herein. Modifications to this Agreement may be made only by written amendments executed by both parties.

Dave Caskey  
Caskey Consulting  
1413 4<sup>th</sup> Street SW  
Washington, DC 20024

  
Dave Caskey  
Consultant

06.10.05  
Date

Resource Consultants, Inc.  
2650 Park Tower Drive  
Suite 800  
Vienna, VA 22180

\_\_\_\_\_  
Sally Neal  
Subcontract Management

\_\_\_\_\_  
Date

Other Required Information:

Tax Identification Number  
Telephone Number  
Fax Number  
Email Address

\_\_\_\_\_  
141-60-3014  
\_\_\_\_\_  
202.841.4415  
\_\_\_\_\_  
202.517.9121  
\_\_\_\_\_  
dave@caskeyconsulting.com

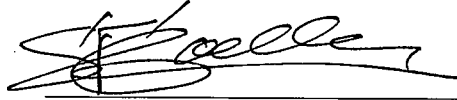
## ATTACHMENT A

1. Review SERCO developed Supervisory Skills course and provide written comments, and recommendations for improvement. Comments will be supplied in a form that the course developers can understand and apply with little or no additional effort. Further comments should be a combination of annotations to course materials and a formal summary in a Word document.
2. This effort should not exceed 16 hours.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "APPLICANT'S ANSWER TO NOTICE OF OPPOSITION" was served on Shari L. Klevens and William T. O'Brien of McKenna Long & Aldridge LLP, with an address of 1900 K Street, N.W., Washington, D.C. 20006, via first class mail, postage prepaid, today May 12, 2008.

By:

A handwritten signature in black ink, appearing to read "S. Goeller", written over a horizontal line.

Stephanie F. Goeller